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# In the Supreme Court of the United States

OCTOBER TERM 1958

No. 609

STANDARD AMERICAN LIFE, A CORPORATION
*Petitioner*

vs.

CYRIL C. SHEEHAN, COMMISSIONER OF INSURANCE
*Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF THE STATE OF MINNESOTA

## BRIEF IN OPPOSITION TO THE PETITION

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### OPINIONS BELOW

The opinion of the Supreme Court of the State of Minnesota has not yet been reported. A copy of the opinion is attached to petitioner's petition as Appendix A.

### JURISDICTION

The judgment of the Supreme Court of the State of Minnesota was pronounced on October 31, 1958, and a Petition for Re-hearing was denied on November 21, 1958. On November 26, 1958, further proceedings in the above

case were stayed by the Supreme Court of the State of Minnesota pending the Petition for Certiorari herein.

The jurisdiction of this court is invoked under *28 U. S. C. A.*, Section 1257 (3).

Under date of November 21, 1958, a mandate by the Supreme Court of the State of Minnesota and the decision of the Supreme Court of the State of Minnesota made and filed herein on October 31, 1958, was made final and the aforesaid mandate was transmitted to the Clerk of the District Court, Hennepin County, Minnesota, and was filed therein on November 24, 1958, such mandate constituting final judgment herein.

## CONSTITUTIONAL PROVISIONS INVOLVED

It is claimed by petitioner that the Due Process Clause of the Fourteenth Amendment to the United States Constitution is involved.

## QUESTIONS PRESENTED

### I.

Will petitioner's constitutional rights, protected under the Due Process Clause of the Fourteenth Amendment, be violated where the State District Court was restrained by a Writ of Prohibition issued out of the State Supreme Court, in which the State Supreme Court determined as a matter of law that the petitioner would not suffer irreparable injury and therefore under state law was not entitled to equitable relief at that point in the administrative proceedings.

### II.

Is petitioner entitled to equitable relief in the District Court after receiving notice of a hearing issued by the

State Insurance Commissioner pursuant to statute on the grounds that the notice did not adequately set out the specific charges or advise petitioner of the true nature of the hearing when the statute which provides for the administrative hearing provides that any enforcement of the Commissioner's findings pursuant to the hearing must be confirmed by the District Court which is empowered to issue appropriate orders enjoining and restraining the continuance of the unfair methods of competition if in the court's opinion petitioner is engaging in unfair trade practices.

## III.

Has a state court decided in this case a federal question of substance not heretofore determined by the United States Supreme Court, or has it decided one in a way probably not in accord with applicable decisions of this court.

## IV.

Was the petitioner's fear of injury *from the administrative proceeding* irreparable injury which would justify the assumption of equitable jurisdiction at this point in the proceeding?

## STATEMENT OF CASE

After unsuccessful attempts on the part of the Commissioner of Insurance, respondent herein (hereinafter referred to as Commissioner) and the petitioner to work out an amicable settlement of their differences, the Commissioner on May 12, 1958, gave notice to the petitioner under the terms of *Minnesota Statutes*, Section 72.28, that a hearing was to be held on June 3, 1958. At that time petitioner

was directed to show cause why an order should not be made by the Commissioner requiring petitioner to cease and desist from certain acts, methods and practices, as outlined in the notice, which in the Commissioner's opinion constituted unfair competition and which he was required by law to prevent. (See Appendix B of petitioner's Petition for a Writ of Certiorari for relevant statutory language.)

Prior to the date of the scheduled hearing, petitioner instituted an action in the District Court, Fourth Judicial District, Hennepin County, Minnesota, for an injunction against the Commissioner which would prevent him from holding any hearing on June 3, 1958, or on any other date, claiming that the Commissioner was acting beyond his legal authority and that any proceedings pursuant thereto would irreparably harm the petitioner and that he had no adequate remedy at law. A temporary restraining order was issued out of the District Court, Fourth Judicial District, State of Minnesota, restraining the Commissioner from holding the scheduled hearing on June 3, 1958, and he was ordered to show cause why a temporary injunction should not issue commanding him and all persons acting under him to refrain from holding a hearing on this matter until final judgment in the court action. The Order to Show Cause was set for hearing on June 9, 1958, but by mutual consent of the parties this hearing was indefinitely postponed and was never held. The Commissioner was anxious to proceed with the hearing because in his opinion the people of the State of Minnesota were being irreparably harmed by the actions of the petitioner, which in the opinion of the Commissioner required him to call the hearing in question in order to carry out the obligations and duties placed on him by the statutes in question.

Because of the Commissioner's concern for the public interest he applied for and obtained an alternative Writ of Prohibition from the Supreme Court of the State of Minnesota, which Writ prohibited the District Court of Hennepin County, Minnesota, Fourth Judicial District, and the Honorable Rolf Fosseen, Judge thereof, together with the petitioner, from taking any further proceedings in the action in District Court, Hennepin County, Minnesota. The applicable statute, *Minnesota Statutes*, 587.02, contained in Volume 2, *Minnesota Statutes*, page 4326, and reading as follows:

> "Such writ shall be served upon the court and party or officer to whom it is directed in the same manner as a writ of mandamus; and a return to such writ shall be made by such court or officer, the making of which may be enforced by attachment."

requires the officer or party to whom it is directed to make a return to the Writ of Prohibition. The petitioner may either reject or adopt the return of the person authorized by law to make a return, in this case the Honorable Rolf Fosseen, Judge of the District Court of the State of Minnesota, Fourth Judicial District. The petitioner in this case adopted part of the return and filed a brief in support of the return of the Honorable Rolf Fosseen in opposition to the Writ of Prohibition.

The Supreme Court of Minnesota thereafter on the 31st day of October, 1958, made the Alternative Writ of Prohibition absolute, thereby permanently restraining any further action by the petitioner against the Commissioner in the District Court of Hennepin County, Minnesota. The Supreme Court denied petitioner's request for rehearing of the matter on November 21, 1958, and the Commissioner scheduled a new hearing for December 3, 1958. The Su-

preme Court, by the Honorable Roger Dell, issued an order under date of November 26, 1958, which stayed the proceedings pending an application by the Commissioner for a Writ of Certiorari to the Minnesota Supreme Court from the United States Supreme Court.

## ARGUMENT

The petitioner herein invokes the jurisdiction of this court under *28 U. S. C.* 1257(3) apparently although not explicitly on the grounds that either this is a federal question of substance not heretofore determined by this court, or that this decision is in conflict with applicable decisions of this court. It would appear from an examination of the case law that this is not a question not heretofore determined by this court, so jurisdictional ground No. 1 must fail.

In connection with ground No. 2, a leading case in this field, that of the exhaustion of administrative remedies, is *Myers v. Bethlehem Shipbuilding Corporation*, 303 U. S. 41, 58 S. Ct. 459, 82 L. Ed. 638 (1938). In this case the N. L. R. B. issued a complaint against the *Shipbuilding Corporation* charging unfair labor practices. After the case had been set for hearing the company attempted to enjoin the holding of the hearing on the grounds that the board was exceeding its powers and that the hearing would cause irreparable damage not only by reason of the cost of the hearing and the loss of time, but also because of serious impairment of good will and harmonious relations existing between the corporation and its employees. The Supreme Court held that the District Court was without power to enjoin the board from holding its hearing. Among the court's reasons in the *Myers* case was "the long-settled rule

of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted." Petitioner's claim in this case is that it will be irreparably injured by adverse publicity both in regard to the general public and in regard to its agents selling insurance in the State of Minnesota.

In the case of *Petroleum Exploration, Inc. v. Public Service Commission*, 304 U. S. 209, 58 Sup. Ct. 834, 82 L. Ed. 1294 (1938), the company sought to enjoin the Kentucky Public Service Commission from investigating wholesale rates for gas marketed by the company in Kentucky on the grounds that the company did not fall within the jurisdiction of the commission, and that any investigation would deny due process and equal protection of the laws, and that it would violate the contract clauses of the federal and state constitutions. The company sought to enjoin the hearing on the grounds that the expense of furnishing the required evidence would be $25,000. The court held: "The necessity to expend for the investigation or to take the risk for non-compliance does not justify the injunction. It is not the sort of irreparable injury against which equity protects." The court relied upon the "abiding and fundamental principle" declared in the *Myers* case, *supra*, "that the expense and annoyance of litigation is 'part of the social burden of living under government'."

While petitioner here has never expressly argued that the cost of preparation was a justification for equitable relief, its argument that the adverse publicity would hurt it financially, is speculative and conjectural and should not be the ground for judicial intervention at this stage of administrative proceeding.

The law in Minnesota is clearly stated in the case of *Thomas v. Ramberg* (1953), 240 Minn. 1, 60 N. W. 2d

18. In this case the court stated that no person is entitled to injunctive relief against an administrative agency unless he can show that pursuit and exhaustion of such administrative remedy will cause him imminent and irreparable harm. The court said, 240 Minn. 5, 60 N. W. 20:

> "* * * In other words, *absent a showing that plaintiff is faced with the actual or imminent peril of sustaining irreparable harm—that is, real and serious injury—if the pending administrative proceedings are continued to their final completion, the sole allegation that the* administrative agency has or is about to exceed its jurisdiction is not of itself sufficient to invoke injunctive relief to enable a court to examine forthwith the basis of the agency's jurisdiction. The right to invoke equity's aid is dependent upon a positive showing that a failure to grant injunctive relief will result in irreparable harm. * * *" (cases cited) (Italics supplied.)

The court also stated, 240 Minn. 6, 60 N. W. 21:

> "Minnesota cases uniformly hold that administrative action *which has not reached a stage causing plaintiff irreparable injury* cannot be enjoined even though the anticipated decision of the administrative agency is questioned on constitutional grounds. Injunctive relief cannot be given for what is merely assumed to be a possible result." (cases cited) (Italics supplied.)

This case was decided on the basis of Minnesota law and upon the determination that the petitioner would not as a matter of law suffer irreparable injury for which there is no adequate remedy at law should the administrative proceedings continue. The state Supreme Court did not purport to decide this case on the issue of the sufficiency of the notice which the Commissioner sent to the petitioner advising the petitioner of the proposed hearing. The court

did not consider either implicitly or explicitly the federal question as being before it. *Osborne v. Clark*, 204 U. S. 565, 567-568. There is not in the majority opinion the implicit or explicit recognition of a federal question and a decision rendered thereon. *Minnesota v. National Tea Co.*, 309 U. S. 551, at 554. *Perkins v. Benguet Consolidated Mining Co.*, 342 U. S. 437, at 441-443. The Supreme Court will not review a judgment of a state court based on adequate and independent non-federal ground even though a federal question be involved and perhaps wrongly decided. *Murdock v. Memphis*, 20 Wall. 590, 636; *Berea College v. Kentucky*, 211 U. S. 45 at 53; *Fox Films Corporation v. Muller*, 296 U. S. 207, where the decision of the state board is based solely upon a non-federal ground, but the federal question was properly asserted, the Supreme Court will determine whether the non-federal ground independently and adequately supports the judgment. The failure of the state court to pass upon the federal question is not conclusive. Only if the non-federal ground is adequate will review be declined. *Wood v. Chesborough*, 228 U. S. 672, 676-680; *West Chicago Street Railway Co. v. Illinois ex. rel. Chicago*, 201 U. S. 506, 519-520; *Chicago B. & Q. R. R. Co. v. Illinois ex rel. Commissioners*, 200 U. S. 561, 580-581. We contend that the decision of the State Supreme Court is based solely on adequate non-federal grounds and that because of this this court should not assume jurisdiction.

The Commissioner's action is clearly valid on its face and it is obvious as a matter of law that the petitioner will have ample opportunity to be heard in the District Court on the question of jurisdiction and it can not be said that under these circumstances he will be faced with irreparable harm if the administrative proceedings con-

tinue. The petitioner's claim is one that could be argued in every instance where an administrative agency calls a hearing. Jurisdiction of the administrative body could under petitioner's contention always be contested in the courts on the ground that the adverse publicity and the cost of preparation for the hearing is an irreparable injury which the court should protect against. This argument would, of course, completely disrupt the entire administrative process and unduly burden the judicial system.

The rule that this court will not grant certiorari to review questions of fact is supported by the following cases:

*Dower v. Richards*, 151 U. S. 658;

*Egan v. Hart*, 165 U. S. 188;

*Marshall Dental Mfg. Co. v. State of Iowa*, 226 U. S. 460;

*Illinois v. Economy Light & Power Co.*, 234 U. S. 497.

The cases cited by petitioner concerning the essential elements of due process may support the generalizations attributed to them. However, they are irrelevant to the question under consideration herein.

## CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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